

Statement Of Regina M. Keeney

Chief

International Bureau

Federal Communications Commission

**Hearing on
International Satellite Reform**

**Before the
Subcommittee on Communications
Committee on Commerce, Science, and Transportation**

United States Senate

September 10, 1998

Executive Summary

Congressional leadership in telecommunications policymaking has significantly advanced the worldwide trend toward privatization and deregulation. I appreciate the opportunity to work with you at this critical juncture in the communications revolution, as you seek to reform the legislative framework governing satellite services and to continue to implement important pro-competitive and deregulatory measures. Recent actions substantially deregulating Comsat, and recent actions toward privatizing Inmarsat and restructuring INTELSAT -- as well as the World Trade Organization (WTO) Agreement (the WTO Agreement) to open markets for telecommunications services around the globe -- are transforming the satellite services market. These recent landmark developments will generate meaningful robust competition in the market for satellite-delivered services. And the United States satellite industry is extremely well-positioned to benefit from the era of competition, liberalization, and privatization that we are ushering in. This progress also bears the potential to deliver satellite services to developing and underserved communities around the world.

As Chairman Kennard said this past Spring at the World Development Conference in Malta, satellite technology is enabling us to create a truly global information community in which the world's disparate populations are linked through the information highway. Continued Congressional leadership is essential if we are to achieve this. I look forward to continuing to work with you to ensure that the U.S. satellite industry, as well as consumers in the U.S and overseas, realize the benefits of the communications revolution.

The Commission believes that new legislation should reflect, and promote, the competitive market that is emerging in global satellite communications. Increased

competition will enable the delivery of worldwide access to diverse and high quality satellite communications at affordable rates to consumers. Increased competition in global satellite communications will promote universal service in the open lands of Montana and the small towns of South Carolina, as well as the developing nations of Africa, Latin America, and Asia. We can best serve these goals by promoting robust competition among all satellite service providers.

The challenge before all of us now is to ensure that regulatory regimes around the world, including our own, permit commercial operators to launch, operate, and offer service in a free and open world-wide market. The Commission's decisions implementing the market access commitments of the WTO Agreement and deregulating Comsat are just two recent examples of our commitment to promote a competitive and deregulatory agenda in the U.S. market. We hope that these specific actions, and the Commission's pro-competitive policy approach, will serve as a regulatory model to encourage other countries to remove remaining regulatory barriers and open the door for entry and further expansion in the global communications market.

Today, the rapidly changing world of telecommunications policy in both the domestic and international arenas reflects an increasingly widespread belief that free and open markets should drive business' decisions, rather than outdated regulatory models from the age of monopolies. Like many of our counterparts around the world, we have come to recognize that competition is the best means of delivering to consumers lower rates, innovation, greater choice, and improved service. To this end, we welcome legislation that serves the critical goals of promoting competition and reducing regulation, and thereby advancing the worldwide momentum toward pro-competitive reform.

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Mr. Chairman and members of the Committee, it is a pleasure to appear before you today. We applaud the members and their staffs for undertaking this effort to examine and reform the laws that govern satellite services. This is a time of tremendous change and opportunity in the satellite communications marketplace. I appreciate the opportunity to work with you at this critical juncture in the communications revolution, as you seek to reform the legislative framework governing satellite services, and continue to implement important pro-competitive and deregulatory measures.

I. The Policy Objectives and Sources of Progress

As we approach the next century, we should continue to reform the existing regulatory framework in order to fully realize the promise of the ongoing telecommunications revolution. In so doing, we seek to achieve three key policy objectives: increased competition among satellite providers; open markets worldwide; and universal access to affordable communications services. These objectives are particularly important in the multi-billion dollar commercial satellite industry which,

since its inception almost thirty years ago, has delivered voice, data, and video communications to people around the world, and which today offers great promise for achieving truly global universal access.

The satellite industry itself has grown enormously in the last two decades. Satellite services and technologies on the horizon promise telephone, video, Internet, and data applications that were unimaginable just a decade ago. The best way to sustain this growth and innovation is through competition. As a general rule, only if and when market forces are demonstrably insufficient should it be necessary to apply appropriate targeted regulation.

In addition to technological innovation, great strides have been made toward opening markets and increasing global competition for all telecommunications services. First, as described more fully below, pursuant to the WTO Agreement, 72 countries around the world have committed to open their markets for basic telecommunications services, and 49 of these countries have made commitments for satellite services. Though not every member of the WTO made market access commitments, those that did account for more than 90 percent of worldwide telecommunications market measured by revenues. Moreover, 55 countries embraced the pro-competitive principles set forth in the WTO Reference Paper. The Reference Paper embodies international acceptance of the principles advanced by Congress in the 1996 Telecommunications Act. We fully expect the WTO Agreement to deliver significant pro-competitive benefits domestically and around the world. In fact, it has already begun to do so: accounting rates have begun to fall in many countries around the world, and the average price of an international long distance call from the United States has fallen from an average of 90 cents per minute in 1996 to 77 cents per minute last year. Rates on competitive routes are already as low as 15 cents per minute on certain transatlantic routes in Europe.

In another important development, the two treaty-based satellite organizations - Inmarsat and INTELSAT -- have taken steps in the last few years toward privatization. In March, INTELSAT took an historic step toward privatization by divesting itself of about 20 percent of its satellite fleet and creating a new spin-off company called New Skies to which it will transfer those assets.

Inmarsat is planning to privatize its operations by creating a public stock corporation to which it would transfer its satellites and business operations. A small intergovernmental organization would be maintained to ensure that the new corporation continues to provide Global Mobile Distress and Safety Services, or GMDSS, pursuant to an agreement with the intergovernmental organization. One of the policy benefits of this privatization is that other U.S. competitors would be able to have access to the privatized Inmarsat system on the same basis as Comsat. Another important pro-competitive element of this privatization would be the elimination of privileges and immunities of both Inmarsat and its Signatories, including Comsat.

The Commission trusts that the industry, including the international satellite organizations, and the WTO will continue to promote competition throughout the global community. Legislative reform, and measured regulatory oversight, however, are necessary to facilitate and ensure that such progress continues, and ultimately achieves the policy objectives of increased competition, market access, and affordable and accessible service.

II. The Global Satellite Industry

A. Creation of Comsat, INTELSAT and Inmarsat

Congress adopted the Communications Satellite Act of 1962 to create an organization that would, for the first time, provide quality international communications services throughout the world. To a large degree, the 1962 Satellite Act relied on economies of scale calling for establishment of a single global satellite system. The Act created Comsat as a publicly-traded private corporation to achieve this goal by developing and investing in the INTELSAT system as a Signatory. At the same time, Congress established extensive government oversight of Comsat. In 1979, Congress expanded Comsat's role, making it a signatory to Inmarsat. Today, Comsat is traded on three U.S. exchanges, with 1997 revenues of more than a half billion dollars and income from continuing operations of 29 million dollars. The company has undertaken an effort to restructure itself and is focusing its business on international satellite and digital networking services.

INTELSAT, the global system developed pursuant to the mandate of the 1962 Satellite Act, is a treaty-based intergovernmental satellite organization (IGO). Through its 143 Signatories, and existing fleet of approximately two dozen satellites and thousands of earth stations, INTELSAT provides services to hundreds of customers in over 200 countries. INTELSAT's 1997 revenues exceeded \$960 million, with a net income of \$367 million and assets worth over \$3 billion. The connectivity provided by the INTELSAT system makes possible the delivery of voice, data, and video communications anywhere on the globe.

Based on the INTELSAT model, Inmarsat was established in 1979 pursuant to the Maritime Satellite Act to improve maritime communications, particularly communications for distress and safety of life at sea. Inmarsat has 83 members and operates eight satellites providing global maritime, aeronautical, and land mobile

communications. In 1996, Inmarsat had revenues of \$369 million, and a net income of \$137 million.

B. Development of Separate Commercial Satellite Companies in the United States

In the early days of the satellite industry, most private entities considered the use of satellites for telecommunications to be expensive and untried. When communication by satellite was a nascent technology, international cooperation of governments through a treaty organization was considered the best means of bridging the gap between the telecommunications resources of the developed and developing world. INTELSAT and Inmarsat should be commended for their success and public service in establishing global connectivity for fixed and mobile telephone services. Since then, however, advances in technology, increased satellite capacity, as well as regulatory reform, have made it feasible for new entrants to enter and compete in the global telecommunications market.

U.S. government satellite policy has evolved considerably since passage of the 1962 Satellite Act. In 1984, a Presidential Determination permitted the authorization of private U.S. satellite systems to compete with INTELSAT and the U.S. permitted, for the first time, the operation of new, commercial, independent international satellite systems.

Today, the private satellite industry provides telephony, direct-to-home television, other video and data services, as well as maritime and land-mobile services. The Commission has, for some time, been licensing private competitors to provide international satellite services. These and other new private companies are

now preparing to introduce services such as broadband internet, expanded video services, and handheld global mobile communications. For example, the Big and Little Leos, or low earth orbit satellites, will bring much-needed voice and data communications services to remote, unserved parts of the United States, to global business travelers, and to residents in developing nations who do not have wireline access to wireline or terrestrial wireless services. In the emerging mobile satellite service market, new systems plan start-up investment costs of over \$27 billion. And the satellite industry, once regarded as a risky investment, is expected to attract over \$100 billion in investment between now and 2010, according to a Space Publications report.

The increasing trend towards competition has largely been driven by the entry of private companies and the expansion of applications and services that these companies offer. The challenge today is to preserve and advance the public interest functions of INTELSAT and Inmarsat in the face of emerging competitive growth markets.

III. Current Reforms: Deregulation of Comsat, Restructuring of the IGOs, The WTO Agreement

A. FCC Deregulation of Comsat

For many years, the Commission has engaged in a consistent and determined effort to deregulate markets for telecommunications services. For the third time in just two years, the Commission recently applied this deregulatory philosophy to Comsat. In 1996, the Commission waived its dominant carrier tariffing rules and permitted Comsat to file tariffs for switched voice and private line service with 14 days notice and

without cost support. In 1997, the Commission waived its dominant carrier tariffing rules and permitted Comsat to file tariffs for full time video and occasional use video on the same streamlined basis. In April of this year, based on changing market conditions, the Commission granted Comsat significant additional regulatory relief. Specifically, the Commission found Comsat non-dominant in the provision of switched voice, private line, and occasional use video in competitive markets, and in the provision of full time video and earth station services in all geographic markets. Together, these markets account for 85% of Comsat's INTELSAT revenues. The Commission also found, however, that Comsat is still dominant in the provision of switched voice, private line, and occasional use video service in non-competitive geographic markets. The Commission further concluded that Comsat failed to satisfy the three-part statutory test for forbearance established in the Telecommunications Act of 1996. Since elimination of regulation governing Comsat in those markets where it is still dominant could harm consumers, the Commission indicated that it would continue to regulate Comsat but initiated a proceeding to establish a streamlined incentive-based form of regulation in lieu of burdensome rate of return regulation.

We believe that we should continue to examine whether Comsat should enjoy certain benefits not available to its competitors, including both its position as the exclusive provider of INTELSAT services and its privileges and immunities. Ultimately, Comsat should evolve into a company that has no special privileges or obligations. Legislation providing for a transition that would eliminate both the remaining government oversight of Comsat as well as the remaining competitive privileges currently enjoyed by Comsat would help create a pro-competitive environment.

B. Restructuring of INTELSAT and Inmarsat

Both INTELSAT and Inmarsat are in the process of restructuring and moving toward greater privatization.

Today, close to half of INTELSAT's total revenues are derived from public switched telephone service, down from 76 percent in 1988. Although public switched telephony is still its largest revenue source, the percentage of INTELSAT's revenue stream from public switched service has fallen. INTELSAT's share of this market is expected to continue to decline largely due to competition from fiber optic undersea cables. At the same time, INTELSAT has expanded into new areas, including broadcast video and Internet services. INTELSAT faces competition from commercial satellite-based companies for broadcast video and Internet services, but is expected to continue to increase its revenues from these new markets. In addition, INTELSAT has targeted service delivery in certain regions of the world, particularly South Asia, where it had 32 percent revenue growth in the last year, and Africa, where it had 18% growth.

INTELSAT has undertaken restructuring in order to remain competitive. In March, in Salvador, Brazil, INTELSAT took the long-awaited first step toward privatization. On March 31, the INTELSAT Assembly of Parties voted to create a separate corporation, previously referred to as INC and now incorporated in the Netherlands as New Skies Satellites N.V. (New Skies). The Signatories of INTELSAT will hold 90 percent of the ownership of New Skies in proportion to each Signatory's INTELSAT investment. INTELSAT will hold a 10 percent interest in New Skies through a nonvoting trust. These ownership interests will take effect upon transfer of the assets to New Skies. The assets have not yet been transferred, thus, on a temporary basis, INTELSAT is the single sole shareholder of New Skies. Although there is no binding commitment to conduct an initial public offering (IPO), INTELSAT's

financial advisors have recommended that there be an IPO by the end of 1999, and have predicted that, after the IPO, as much as 25 percent of its equity could be held by non-Signatory shareholders.

The INTELSAT Assembly decided to transfer to New Skies, six satellites, five of which are currently in orbit and one which will be launched next year. INTELSAT also will transfer the associated International Telecommunications Union orbital filings for those slots. INTELSAT will provide New Skies a capital contribution of \$60 million, as well as provide various engineering and administrative services to New Skies on a transitional basis. INTELSAT agreed to waive certain of its privileges and immunities with respect to New Skies and no privileges or immunities will be accorded to the new entity. In addition, the INTELSAT Assembly addressed and agreed to a number of other points relating to the governance and commercial and technical operations of New Skies, including a provision not to seek authorization to provide exclusive service in any country or region.

The Commission is hopeful that the decisions approved by the INTELSAT Assembly of Parties last March will result in a structuring of New Skies that is consistent with our pro-competitive policies. As we have indicated to all interested parties, Commission staff participation on the U.S. delegation does not bind the Commission with respect to future review of any application relating to the provision of services to, from, or within the United States employing New Skies' satellites. The Commission eventually will have to evaluate how New Skies' entry into the U.S. market will impact competition in the provision of satellite services. That evaluation will be based on statutory requirements, the public record, and Commission rules implementing the WTO Agreement as it applies to satellite services. The Commission's review will necessarily involve consideration of the competition policy

criteria that the Commission adopted last year for affiliates of INTELSAT and Inmarsat.

Unlike INTELSAT, Inmarsat's revenue stream has been steady over the years without significant change. Competition for Inmarsat, however, is starting to develop. Inmarsat will compete with private consortia largely composed of U.S. firms such as Motorola and Loral. American Mobile Satellite Corporation is an operational U.S. company providing mobile satellite services in North America. In anticipation of the development of competition, Inmarsat has undertaken efforts to restructure its operations. In January 1995, Inmarsat created an affiliated private company, ICO Global Communications LTD, to provide global mobile handheld communications services.

C. The WTO Agreement

On February 15, 1997, 69 nations, including the United States and most of our trading partners, took the historic step of concluding the WTO Agreement. Since then, three others have made market opening commitments under this agreement. In addition, 55 of the parties to the WTO Agreement have signed the Reference paper on Pro-Competitive Regulatory Principles (the Reference Paper). The Reference Paper contains a binding set of competition rules and calls for separation of a country's telecommunications regulator from its national telecommunications service provider.

By signing the Agreement and accepting the Reference Paper, parties committed to open their markets for basic telecommunications services and replace the traditional regulatory regime of monopoly telephone service providers with pro-competitive and deregulatory policies. The Telecommunications Act of 1996 was the blueprint for the worldwide initiative to move from a world of regulated monopolies to one characterized by pro-competitive and deregulatory open entry policies. We

expect the market-opening commitments and reform initiatives of our trading partners to deliver pro-competitive benefits throughout the world.

In light of the market access commitments made last year, the Commission adopted new rules for foreign participation in the U.S. market consistent with the goals of the WTO accords, in parallel with our major trading partners. In return for opening the U.S. market to competition, the U.S. received binding commitments to allow U.S. companies to enter previously closed foreign markets and to develop competing networks for local, long distance, wireless, and international services. In most cases, these markets have been entirely closed to competition until now.

In its November 1997 Order pertaining to the WTO Agreement on satellite services, the Commission stated that it would apply a presumption in favor of entry to a satellite licensed by a WTO Member. The Commission, however, reserved the right to attach conditions to the grant of authority, or, in the exceptional case in which an application poses a very high risk to competition in the U.S. satellite market, to deny the application. In determining whether an application to serve the U.S. market by a satellite of an IGO affiliate from a WTO Member raises the potential for competitive harm, the Commission will consider any potential anticompetitive or market distorting consequences of continued relationships or connections between an IGO and its affiliate. The Commission stated that, for example, it would look at whether the affiliate is structured to prevent practices such as collusive behavior or cross-subsidy, the degree of affiliation between the IGO and its affiliate, and whether the affiliate can directly or indirectly benefit from IGO privileges and immunities. We also will consider the ownership structure of the affiliate, the effect of IGO and other Signatory ownership, and the existence of clearly defined arms-length conditions governing the affiliate-IGO relationship. The Commission stated that, for example, it anticipates that

arms-length conditions would include separate directors, employees, and accounting systems, and fair market valuing for permissible business transactions between an IGO and its affiliate that is verifiable by an independent audit and consistent with normal commercial practice. There should be no common marketing or recourse to IGO assets for credit or capital. It is also essential that an IGO not register or coordinate spectrum or orbital locations on behalf of its affiliate.

With its November decision, the Commission carried out the commitments made by the U.S. government in the WTO Agreement. Consequently, we expect that foreign carriers will begin to enter and compete in the U.S. market. We also expect that U.S. carriers will likewise be able to enter and compete in previously closed foreign markets. We are confident that the global implementation of the WTO Agreement will result in significant consumer and economic benefits. At the same time, however, we recognize that much work needs to be done to ensure that the promise of the WTO Agreement is fulfilled, and we plan to look carefully at the market-opening steps taken by the rest of the world.

IV. Considerations for a New Legislative Framework

The time is ripe to adopt satellite reform legislation. Despite the development of competition and the delivery of a broad range of innovative services, the Communications Satellite Act of 1962 has undergone little change since it was enacted over 35 years ago. The Satellite Act paved the way for creation of a global satellite system when developing space technology was first being applied to telecommunications. Today, those technologies have been applied and expanded in ways that few could have predicted in 1962.

The Maritime Satellite Act has also seen only minor change since its enactment.

New legislation should certainly reflect the competitive market that is emerging in global satellite communications and promote worldwide availability of diverse and affordable high quality satellite communications. Full and fair competition among all satellite service providers is the best means of achieving this goal. Promoting market access worldwide will allow meaningful competition to take root. Privatization of INTELSAT and Inmarsat should be a policy goal of any new legislation.

Specifically, legislation could provide guidelines for privatizing these organizations and eliminating government participation or sponsorship in them. In my view, privatization should entail: (1) conversion to a publicly held corporation listed and traded on the public exchanges; (2) opportunity for participation in the corporation by entities other than current signatories; (3) elimination of privileges and immunities; (4) location in a jurisdiction with effective competition laws and regulatory oversight; and (5) continued provision of GMDSS services by Inmarsat, and continued services to developing countries by INTELSAT.

Legislation also should provide effective incentives for INTELSAT and Inmarsat to privatize in a pro-competitive manner. These incentives must be consistent with our obligations under the WTO Agreement. Domestically, Comsat should evolve into a company with no special privileges or obligations. As it evolves into an independent entity, the current overlay of government oversight and regulation of Comsat that its special role in INTELSAT and Inmarsat requires should be eliminated.

The current steps to create separate private corporations that are affiliated with INTELSAT and Inmarsat raise unique competitive concerns. INTELSAT's current and potential competitors are concerned about their ability to compete due to INTELSAT's

global access to markets and control over substantial satellite capacity, as well as its Signatories' ability to keep competitors out of their home markets. For example, in countries that have not yet privatized their communications systems, the government and the Signatory are the same entity. As a result, those INTELSAT Signatories are in a position to directly affect their government's market access decisions, and could impede entry by competitors of an IGO affiliate. Legislation could attempt to address these concerns by preventing a private commercial affiliate or spinoff from gaining an unfair advantage in the market through its affiliation with an IGO. As the Commission stated in our WTO Order relating to satellite services, there should be substantial separation between the IGO and its commercial affiliate to minimize the potential for it to benefit from such an unfair advantage to the detriment of competition.

V. Conclusion

We applaud the Congress for initiating satellite reform. As grounded in statute and Commission policy as well as the WTO Agreement, we urge Congress to adopt legislation that would advance competition in the global satellite communications market. The United States has long been recognized as the leader in promoting competition in international telecommunications markets. Today, our country has the most well-developed satellite industry in the world. For it to continue to prosper, we as policy makers must continue to promote market access and deregulation across the globe. Consistent with the domestic regulatory reform mandated by the Telecommunications Act of 1996, we must advance a pro-competitive deregulatory agenda for global satellite services around the world.

In our drive toward satellite reform, there is one other objective we must achieve. That goal is universal access. We must preserve and promote the global

connectivity that was the primary goal of the 1962 Satellite Act. In the information age, that goal is as important today as it was when Early Bird was first launched. It will be even more important tomorrow, and in the next century. Affordable universal access to telecommunications services is critical throughout America. We must strive to ensure that every ranch in Montana, every home in North Dakota, and every coastal community in Louisiana has access to affordable telecommunications services. We also must strive to bring about affordable universal access in the many underserved, rural, and high cost regions of the world.

We enthusiastically support Congress in its challenging task of designing new legislation based on pro-competition principles and on the current and the projected state of satellite telecommunications in the world. The 1962 Satellite Act was created to achieve global communications connectivity via a then-developing technology and to satisfy national interest goals. Today's concerns are different from those that guided policymakers in 1962. The WTO Agreement and the accompanying Reference Paper signal that the days of state-sponsored monopoly providers are numbered. We must work together to ensure that any future privatization efforts promote the parallel goals of universal access and competition in mobile satellite services for users everywhere. Both of these goals are achievable and we support policies that make them happen.

Privatization is critical to bringing about real competition in international satellite communications, particularly in the developing world. Your efforts, as well as the changes underway in the IGOs, not only will greatly impact the future of the treaty-based organizations, but will set the stage for further liberalization in countries around the world. Congressional action is essential for promoting an open, competitive marketplace, and for achieving universal access to affordable communications

service.

We look forward to continue to work with you on these important satellite policy issues.